



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 5 1997

EC-2002-030
II-A-109

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Steven Garzone, Owner of Lyons' Enterprise, Inc.
d/b/a Lyons' Sunoco
210 Lexington Street
Waltham, MA 02154

Re: File No. AED/MSEB - 4771

**NOTICE OF VIOLATIONS OF THE CLEAN AIR ACT AND
REQUEST FOR INFORMATION PURSUANT TO SECTION 114
OF THE CLEAN AIR ACT**

Dear Mr. Garzone:

On June 9, 1997, an approved U.S. Environmental Protection Agency ("EPA") survey inspection was conducted at your Sunoco branded retail outlet, located at 210 Lexington Street, Waltham, Massachusetts. The inspection was conducted to determine compliance with section 211(k) of the Clean Air Act ("Act"); 42 U.S.C. § 7545(k), and the regulations issued thereunder (40 C.F.R. part 80, Subpart D). Where inappropriate fuels are used in internal combustion engines, the emissions of harmful gases can increase significantly. Notwithstanding improvements in vehicle emission controls, emissions from motor vehicles continue to make up a very large portion of all air pollution. Congress has established a program of improvement and regulation of fuels to protect our air quality from unnecessary pollution associated with the misfueling of vehicles.

The applicable regulations provide that no person may manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline represented as reformulated and intended for sale or use in any covered area unless it meets the applicable standards specified in 40 C.F.R. § 80.41. This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation in addition to recovery of the amount of the economic benefit or savings resulting from the violation.



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As a result of the inspection, EPA has determined that Lyons Sunoco, which is located in a reformulated gasoline covered area, was selling gasoline in violation of 40 C.F.R. § 80.78(a)(1) in that it failed to meet the applicable Rvp standard specified in 40 C.F.R. § 80.41. The gasoline had an Rvp of 8.9 psi which exceeds the applicable standard of 8.3 psi. As the owner/operator of the retail facility where the violation was found, Lyons' Enterprise Inc. d/b/a Lyons' Sunoco is liable for the violation of 40 C.F.R. § 80.78(a)(1) pursuant to 40 C.F.R. § 80.79(a)(1).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of EPA to assess a civil penalty of up to \$25,000 for every day of violation and the economic benefit or savings resulting from the violation. In determining the appropriate penalty for the noticed violation, we consider the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of your business, your history of compliance with the Clean Air Act, actions taken by you to remedy the violation and to prevent recurrence of further violations, the effect of the penalty on your ability to continue in business and such other matters as justice may require.

We believe it is in your interest to demonstrate that remission or compromise of the penalty amount is appropriate. However, in order to assist us in developing the appropriate penalty and settlement positions, we have prepared the enclosed Request for Information. Under the law you are required to submit this information or be subject to additional penalties and other sanctions above and beyond those assessed for the fuel violation identified in this Notice. In addition, if you do not submit this information in a timely manner, we will be forced to make assumptions with regard to the factors to consider in determining the appropriate amount of civil penalty, which means that the resulting penalties may be larger than if you supply the requested information.

We encourage early settlement of such matters. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

The EPA attorney designated below has been assigned to this case. All information should be sent to the case attorney. Please contact this attorney regarding this Notice of Violation and Request for Information.

Angela E. Fitzgerald, Attorney
U.S. Environmental Protection Agency
Mobile Sources Enforcement Branch
Air Enforcement Division (2242A)
401 M Street, SW
Washington, D.C. 20460
Phone number: 202/564-1018

Please let me once again emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,

Bruce C. Buckheit

Bruce C. Buckheit, Director
Air Enforcement Division

Enclosure

ENCLOSURE

REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE CLEAN AIR ACT, 42 U.S.C. § 7414

Re: File No. AED/MSEB - 4771

Section 114(a) of the Act, 42 U.S.C. § 7414(a), provides that the Administrator may require any person who is subject to any requirement of the Act, "to make such reports . . . and . . . provide such other information as the Administrator may reasonably require" Lyons Sunoco, d/b/a Lyons Enterprise Inc. is subject to the requirements and prohibitions of the reformulated gasoline and anti-dumping requirements of section 211(k) of the Act, 42 U.S.C. § 7545(k) and thereby is also subject to the informational requirements of section 114(a) of the Act.

Pursuant to the authority contained in section 114 of the Act, 42 U.S.C. § 7414, please provide the following information for the period of June 1, 1997 through July 30, 1997 for Lyons Sunoco and, if appropriate, any subsidiaries, parents, affiliates or related companies:

1. We are assuming your annual gross revenues (income before expenses or deductions) are over \$2 million. If you do not agree, submit your financial statements for the prior three fiscal years and this year current to date including but not limited to balance sheets, profit and loss statements, statements of changes in position and federal income tax returns.
2. All product transfer documents relating to the purchase, sale, transport, blending or storage of any reformulated gasoline, conventional gasoline and/or components of any reformulated gasoline or conventional gasoline to or from your Sunoco branded retail gasoline facility located at 210 Lexington Street, Waltham, Massachusetts.
3. All bills and invoices relating to the cost of any reformulated gasoline, conventional gasoline and/or components of any reformulated gasoline or conventional gasoline purchased by Lyons Sunoco, d/b/a/ Lyons Enterprise Inc. for sale at the above-referenced retail station during the time period specified above.
4. All documents relating to the price of any reformulated gasoline, conventional gasoline and/or components of any reformulated gasoline or conventional gasoline as offered for sale at the above-referenced retail station during the time period specified above, by day and by grade of gasoline.
5. Documents demonstrating what actions were taken to remedy the violation, including the disposition of non-complying gasoline, and to ensure that similar types of violations are less apt to occur in the future.

6. Any and all other information indicating that remission or compromise of the civil penalty is appropriate. You may elect to provide a statement of the cause of the violation, if known, and any mitigating factors you desire to bring to our attention.

The response to this request shall be full, complete, and to the best of your knowledge. A reply which is false, misleading, or made without regard to its veracity is, in our judgment, equivalent to a refusal to submit information. In order for us to proceed expeditiously with our enforcement docket, **your response must be submitted within fifteen days after the date of this letter.** If you encounter difficulty in responding to this request within this time frame, please contact the case attorney identified herein. Absent a written extension of the required response date, your failure to respond by the date set forth may lead to immediate enforcement action and a lost opportunity for early settlement of this matter. EPA's enforcement options include the issuance of a compliance order by the Administrator under section 113(a) of the Act, or the filing of a civil action seeking a permanent or temporary injunction, or a civil penalty of not more than \$25,000 per day of violation, or both, under section 113(b) of the Act.

Please be aware that a knowing or willful submission of false, fictitious, or fraudulent statements or representations may subject you to possible criminal liability.

Pursuant to EPA regulations appearing at 40 C.F.R. Part 2, you are entitled to assert a confidentiality claim covering any part of the submitted information. If you do not assert such a claim, the submitted information may be available to the public without further notice. Information subject to a business confidentiality claim may be made available to the public only to the extent set forth in the above cited regulations.